

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Marc Peters-Golden et al.

Serial No.: 09/291,656 Group No.: 1653 Filed: 03/03/1999 Examiner: Carlson, K.

Entitled: Administration Of Products Of The 5-Lipoxygenase Metabolic

Pathway To Enhance Antimicrobial Defense

## REQUEST TO WITHDRAW FINALITY OF FINAL OFFICE ACTION MAILED SEPTEMBER 14, 2007

Mail Stop - Amendment Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

## CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)(1)(i)(A)

I hereby certify that this correspondence (along with any referred to as being attached or enclosed) is, on the databelow, being deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addr. Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450,

Dated: October 29, 2007

Examiner Carlson:

The Applicants respectfully request that the Examiner consider withdrawing the pending Final Office Action as being prematurely issued. The Applicants have diligently pursued the prosecution in good faith and in accordance with USPTO guidelines:

The applicant who is <u>seeking to define</u> his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and <u>not be prematurely cut off</u> ...

MPEP §706.07 Final Rejection [emphasis added]. Further, the Applicants have not engaged in any behavior intended to unfairly prolong the examination:

...the applicant who dallies in the prosecution of his or her application, resorting to technical or other obvious subterfuges in order to keep the application pending before the primary examiner, can no longer find a refuge in the rules to ward off a final rejection.

*PATENT* Attorney Docket No. UM-03662

MPEP §706.07 Final Rejection. On the contrary, the Applicants have objectively considered

the Examiner's arguments and provided claim amendments where appropriate. In response, the

Examiner has withdrawn some rejections and/or objections. In other words, progress is being

made on this application. A Final Rejection at this point unfairly truncates the Applicants'

entitlement to a full and fair hearing:

The examiner should never lose sight of the fact that in every case the applicant is

entitled to a full and fair hearing ...

MPEP \$706.07 Final Rejection. At the request of the Board, Applicants amended Claim 28 to

recite "an article of manufacture" instead of "a composition" to improve clarity. The Examiner

admits this amendment overcomes the Boards' indefinite rejection but unfairly insists that the

rejection can only be lifted by the Board. In this Final Office Action, the Examiner has issued a

new rejection to Claims 28-37 based upon Written Description. The Applicants have previously

presented similar claims, without rejection.

The Examiner, therefore, is now resorting to "piecemeal examination" where it can be

reasonably assumed that the Applicants have no rebuttal if the present finality stands. In fact, the

Applicants believe that the claim amendments and argument in the previous office action should

have resulted in allowance of the claims.

Consequently, the Applicants respectfully request that the Examiner consider

withdrawing the present final office action.

Dated: October 29, 2007

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